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FEDERAL COMMUNICATIONS COMMISSION
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July 31, 2000

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Re: **Ex Parte Presentation of Bachow/Coastel, L.L.C. and Petroleum
Communications, Inc., WT Docket No. 97-112, CC Docket No. 90-6**

Dear Ms. Salas:

Bachow/Coastel, L.L.C. ("Bachow/Coastel") and Petroleum Communications, Inc. ("PetroCom") pursuant to section 1.1206(b)(2) of the Commission's rules,¹ and by their attorneys, herewith file with the Commission an original and one copy of the summary of their *ex parte* presentation at the Commission on Friday, July 28, 2000, and Bachow/Coastel's paper handout from that meeting. On that date, Bachow/Coastel Managing Director Jay D. Seid, Bachow/Coastel counsel Steven J. Hamrick, Esq. of Fleischman and Walsh, L.L.P., o2wireless Solutions, Inc. Vice President Michael E. Hofe and PetroCom's counselors, Richard S. Myers, Esq., James J. Keller and Jay Lazrus, Esq. of Myers Keller Communications Law Group met with David Furth, Senior Legal Advisor, Wireless Telecommunications Bureau; Paul D'Ari, Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau; Roger Noel, Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau; Mr. Michael A. Ferrante, Wireless Telecommunications Bureau; Ms. Davida Grant, Wireless Telecommunications Bureau; and Mr. Lloyd W. Coward, Wireless Telecommunications Bureau. These individuals discussed issues concerning the above-referenced proceeding.

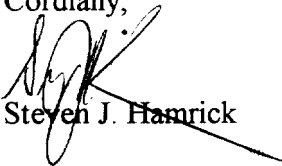
¹ 47 C.F.R. § 1.1206(b).

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Magalie Roman Salas
July 31, 2000
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Bachow/Coastel is filing two additional copies of this summary with the Commission due to the second docket number attached to this proceeding. If you have any questions concerning this matter, or if you require additional information, kindly contact Bachow/Coastel's undersigned counsel.

Cordially,



Steven J. Hamrick

Counsel to Bachow/Coastel, L.L.C.

Attach.

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PRESENTATION OF BACHOW/COASTEL, L.L.C.

CELLULAR SERVICE AND OTHER COMMERCIAL
MOBILE RADIO SERVICES IN THE GULF OF MEXICO;
AMENDMENT OF PART 22 OF THE COMMISSION'S
RULES TO PROVIDE FOR FILING AND PROCESSING OF
APPLICATIONS FOR UNSERVED AREAS IN THE
CELLULAR SERVICE AND TO MODIFY OTHER
CELLULAR RULES

WT DOCKET NO. 97-112
CC DOCKET NO. 90-6

JULY 28, 2000

OBJECTIVES FOR THIS PROCEEDING

Land-based carriers claim: (1) promoting the provision of ubiquitous, reliable cellular service to land-based carriers' subscribers; (2) protecting Gulf carriers' legitimate service rights; (3) addressing the PetroCom remand.

Response:

The land-based carriers' list of "objectives" for this proceeding is patently false.

The Commission's "principal goals in this proceeding are (1) to establish a comprehensive regulatory scheme that will reduce conflict between water-based and land-based carriers, (2) to provide regulatory flexibility to Gulf carriers because of the transitory nature of water-based sites, and (3) to award licenses to serve well-traveled coastal areas to those carriers that value the spectrum most highly and will maximize its use to provide the best quality of service to the public." *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, Second Further Notice of Proposed Rulemaking, FCC 97-110, ¶ 3 (1997).

THE COMMISSION CAN ACHIEVE THESE OBJECTIVES UNDER THE CURRENT RULES

Land-based carriers claim: Service to land areas by authorized cellular carriers is currently compromised, adversely affecting service reliability and public safety.

Response:

Service to land areas by land-based cellular licensees is reliable in virtually all areas of the Gulf coast.

The land-based carriers are at fault for the land areas without reliable cellular service.

The current rules provide the means for the land-based carriers to provide service to their licensed areas. For example, land-based carriers can use down-tilt antennae to serve the beaches without extending service area boundary ("SAB") contours into the waters of the Gulf of Mexico.

Land-based carriers claim: Propagation characteristics over water pose unique issues.

Response:

This is false.

The only difference between the Gulf of Mexico and land is that there are mountains, trees and buildings on land.

The Commission, and its licensees, certainly know the propagation characteristics of radio waves over water, and the Commission does not have different rules for radio carriage over the Great Lakes, the Mississippi River, etc. *See Comments of Michael E. Hofe*, attached hereto.

Land-based carriers claim: Under PetroCom remand, land carrier's service area is defined by contours while the Gulf carrier's service area defined by GSMA (sic) – regardless of whether the latter provides service up to the coastline.

Response:

Finally, the land-based carriers recognize the opinion of the D.C. Circuit in *PetroCom*.

The land-based carriers are arguing that the Gulf-based carriers do not have their license areas defined by the area of service, as land-based carriers do.

However, *PetroCom* set aside like treatment of land-based and Gulf-based carriers due to the unique circumstances of the Gulf-based carriers.

“Despite the Commission’s obvious, longstanding recognition of petitioners’ unique plight, the Third Report and Order silently glosses over these differences, mandating that water-based and land-based licensees alike adhere to a uniform actual service area rule.” *PetroCom* at 1173.

As the Commission stated that one of its goals in this proceeding is “to provide regulatory flexibility to Gulf carriers because of the transitory nature of water-based sites,” Second FNPRM at ¶ 3, the Commission cannot hold Gulf carriers to the same rule as land carriers. Such rulemaking would be wholly opposite of the Commission’s stated objectives in this proceeding, and thus would fail upon review by the D. C. Circuit.

Land-based carriers claim: Land-based carriers are unable to serve shoreline areas without consent of adjacent Gulf licensee (sic); Gulf carriers have veto power over de minimis (or other) SAB extensions beyond the shoreline.

Response:

Under the current rules, land-based carriers may serve shoreline areas, on land, without the Gulf carriers' consent, if the land carriers' SAB contours do not extend into the Gulf carriers' cellular geographic service area ("CGSA").

This is fair to the land carriers.

Gulf carriers cannot service Gulf waters along the shoreline without the consent of land carriers if the Gulf carriers' SAB contours extend into the land carriers' CGSA (interestingly, the Gulf carriers are not complaining to the Commission that land carriers have "veto power" over their *de minimis* SAB contour extensions).

In fact, the Commission's rules disallow all carriers from serving adjacent carriers' CGSAs, even among two land-locked MSAs.

The Commission's current rules provide for resolution of such circumstances: 47 C.F.R. § 22.911(d)(1) mandates licensees to "cooperate in resolving co-channel and first-adjacent channel interference by changing channels used at specific cells or by other technical means," and 47 C.F.R. § 22.912(b) permits licensees to enter into contracts to allow SAB contour extensions into their CGSAs.

These Commission rules aided the creation of many SAB extension contracts until the Second FNPRM proposed to give the areas of the Gulf with the most SAB extensions to the land carriers, thus removing the land carriers' incentive to enter into SAB extension contracts to resolve incidents of violative SAB extensions.

Not coincidentally, SAB extension contracts are no longer the norm after the release of the Second FNPRM, and all of the collocation agreements in the Gulf were entered before the Second FNPRM's release.

ALLTEL'S PROPOSAL DOES NOT ADDRESS THE COMMISSION'S OBJECTIVES

Land carriers claim: Under ALLTEL proposal, land and Gulf carriers could freely extend and overlap contours into Coastal Zone, subject to frequency coordination, but without interference protection in that zone. Land carriers would be fully protected from interference in land areas; and Gulf carriers would be fully protected in the Gulf's Exclusive Zone.

Response:

This land carrier proposal misses all three Commission objectives stated in the Second FNPRM.

First, the ALLTEL proposal will lead to an increase in the number of disputes in the Gulf, and the "Coastal Zone" would more appropriately be called the "War Zone."

In fact, "Coastal Zone" is a misnomer - that zone is actually the licensed, exclusive territory of the Gulf carriers.

The ALLTEL proposal's lack of interference protection means that there will be no guarantee of interference-free service, even to emergency dispatch service; there will be higher incidences of interference in the Gulf than there is now under the current rules; there will be greater uncertainty over primary licensing rights in the "Coastal Zone"; and the result is that there will be more disputes in the Gulf. Second, this proposal does nothing to address the "unique plight" of Gulf carriers - stealing a 12-mile band of the Gulf carriers' license territory does not address the Gulf carriers' unique operating characteristics.

Finally, the ALLTEL proposal does not mention the third Commission objective for this proceeding.

Land carriers claim: Numerous commenters support ALLTEL proposal: AT&T Wireless; BellSouth; Dobson Cellular Systems; GTE; SBC Wireless; Telepak; Texas RSA 20 B2 Limited Partnership.

Response:

Of course, land carriers will all seek to take license territory from other licensees, especially when it can be done without charge.

Again, this does not address the Commission objective of assigning Gulf spectrum to those who value it the most.

Furthermore, the Commission cannot base valid rulemaking upon industry votes. The D. C. Circuit would not uphold such rulemaking under the Administrative Procedure Act.

Land carriers claim: Provides for reliable service for land- and Gulf-based carriers in their respective service areas; allows for adequate signal strength at shoreline and higher signal strength toward land for Gulf carrier.

Response:

Not only is this land carrier contention false, it also displays an inherent inconsistency in one of the land carriers' arguments.

First the falsehood - the ALLTEL proposal's Coastal Zone lacks interference protection, which leads to increased interference and less reliable coverage than under the current rules.

Second, the fact that the land carriers have a stronger signal at the shoreline negates any argument or claim by the land carriers that they cannot provide reliable service on the shore, because they have the stronger signal.

Land carriers claim: RF interference concerns are addressed by mandatory frequency coordination and buffer zone between land- and Gulf-based licensees' primary service areas.

Response:

This notion is fallacious.

The ALLTEL plan explicitly disavows interference protection in the "Coastal Zone."

Furthermore, frequency coordination is futile given the unique, transient nature of Gulf carriers' operations. This transient nature is specifically what the D.C. Circuit mandated that the Commission address in further rulemakings. *See PetroCom* at 1173.

Clearly, the ALLTEL proposal fails to meet the D. C. Circuit's mandate.

Finally, as their names indicate, the Gulf carriers are the primary carriers in the Gulf of Mexico, and the land carriers are the primary carriers on the land.

Land carriers claim: Administratively simple solution for the entire Gulf, as both land-based and Gulf-based carriers may use the land-based SAB formula.

Response:

The truth is that the ALLTEL proposal would be an administrative nightmare for the Commission.

First, frequency coordination would fail, because the Gulf carriers' operations are transient.

Second, if the Commission "locked in" the Gulf carriers' service areas through frequency coordination, the D. C. Circuit would strike down such Commission action for the same reasons it overturned the Third Report and Order in *PetroCom*.

This is especially so given the complete lack of a record supporting the "locking in" of Gulf carriers' service areas. The ALLTEL proposal relies on anecdotes and an engineering model, not real-world, actual data.

Finally, the ALLTEL proposal's lack of interference protection would lead to an increased amount of interference disputes at the Commission, thus clogging the Commission's docket and wasting valuable Commission resources (considering that the current rules result in fewer interference disputes).

Land carriers claim: Gulf licensees may move sites without threat of losing territory from service areas (addressing PetroCom remand).

Response:

This is impossible.

The Gulf carriers could not move sites without threat of losing territory in the "Coastal Zone" because of frequency coordination.

Furthermore, the D.C. Circuit will agree that the first inch of Gulf waters licensed to an entity other than the current two Gulf carriers is a loss of territory, and there is no record or factual basis upon which to promulgate rules doing so.

Land carriers claim: Private inter-carrier agreements within rules remain permissible.

Response:

Private inter-carrier agreements are permissible now, and occurred more regularly before the Second FNPRM's promise of free license expansion for the land carriers removed all incentive for the land carriers to enter such agreements.

Land carriers claim: Land-based carriers forfeit any right to claim unserved areas in the Gulf whether or not platform moves.

Response:

The land carriers are not "forfeiting" anything, because they currently do not have the "right" to serve unserved areas of the Gulf.

THE CURRENT RULES PROVIDE FOR RELIABLE SERVICE FOR LAND-BASED CUSTOMERS - - CURRENT ACTION BY THE LAND CARRIERS IS WHAT THREATENS SERVICE TO LAND-BASED CUSTOMERS

Land carriers claim: Bachow/Coastel assertion that "reliable" service exists to coastal areas is erroneous. Current regime compromises service reliability. Rule change is necessary.

Response:

The current rules provide for reliable service to land carriers along the Gulf coast, and most all land customers along the Gulf coast enjoy reliable service.

The only entities threatening service to land customers are land carriers determined to push the ALLTEL proposal through the Commission while making their self-stranded customers "Exhibit A" in an attempt to buttress their arguments, and land carriers unwilling to design properly and construct their systems (to lower operating costs).

The current regulatory regime allows for engineering and technical solutions to serving the beach, such as the use of down-tilt antennae.

A rule change is unnecessary, and would only lead to increased interference and litigation.

Land carriers claim: Providing Gulf carriers interference protection to the shoreline exacerbates engineering and customer service challenges for land-based carriers and disserves land-based customers. PetroCom decision does not require inviolate right of Gulf carriers to exclusive territory extending up to coastline.

Response:

The Commission's protection of the Gulf carriers up to the shoreline does not present any difficulties to land carriers, because the land carriers can effectively engineer their systems to serve the beaches.

Furthermore, the *PetroCom* decision does recognize the "inviolate right of Gulf carriers to exclusive territory up to the coastline." See *PetroCom* at 1168.

Land carriers claim: RF Propagation: vast difference in signal characteristics over water means that provision of adequate and reliable land-based service involves signal "leakage" over adjacent Gulf area.

Response:

There is no basis for this fallacy.

There is no "vast difference" between the Gulf shore and the Gulf waters and the borders of two land licensees of land-locked states in the Great Plains.

There are no (or few) buildings or trees in both places.

Furthermore, these same land carriers operate licenses over bays, lakes, rivers and ponds, and are not complaining that the Commission's rules fail to address the "vast" propagation characteristics over those bodies of water.

This is merely an attempt by the land carriers to create hypothetical problems where there are no problems to support their drive to steal license territory away from the Gulf carriers.

Land carriers claims: Service Rates: Gulf rates typically far exceed rates for land-based service, resulting in customer dissatisfaction when Gulf carrier captures land-based traffic and driving customers to non-cellular competitors.

Response:

The land carriers are asking the Commission to insulate them from competition; however, the Commission does not shield carriers from competition. *See Atlantic Business and Community Development Corporation, Debtor Internal Revenue Service v. Subranni*, 994 F.2d 1069 (3d Cir. 1993) (citing *F.C.C. v. Sanders Bros. Radio Station*, 309 U.S. 470, 475-76 (1940)); *see also Eligibility for Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications*, Report and Order, 10 FCC Rcd 6280, ¶ 36 (1995); *Transport Rate Structure and Pricing*, Third Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 10 FCC Rcd 3030, ¶¶ 21, 96 (1994).

Furthermore, the Telecommunications Act of 1996 mandates that the Commission stimulate competition.

Also, the Commission is not a rate-setter for wireless services. The Commission has denied seven states' petitions for authority to regulate rates for Commercial Mobile Radio Services as part of a continuing trend of reduced regulation. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Competition in the Commercial Mobile Radio Services Second Annual Report, 7 CR 1 (1997).

The Commission has removed itself from regulating cellular rates. *See Rogers Radiocall, Inc.*, Final Decision, 96 FCC 2d 1172, ¶ 49 (1984) (citing *Houston Mobilfone, Inc.*, 65 FCC 2d 848, 859 (Rev. Bd. 1977), *review denied*, FCC 78-477 (July 11, 1978), *remanded sub nom. Mobilfone Service Inc. v. FCC*, 605 F.2d 572 (D.C. Cir. 1979); *on remand Houston Mobilfone Inc.*, 78 FCC 2d 1067 (1980).

Land carriers claim: System Configuration: land-based systems are configured for hand-held low power units, Gulf systems for ships and platforms; land-based systems require greater signal strength to provide adequate service.

Response:

This is patently false.

Gulf carriers' systems also serve hand-held units.

Furthermore, the current rules permit land carriers to serve the land for reliable service.

Land carriers claim: Demographics: major population centers and substantial traffic at cellular shoreline boundaries.

Response:

Major population centers and substantial traffic at cellular shoreline boundaries are not problematic. *See Comments of Michael E. Hofe*, attached hereto.

There are cellular boundaries along major interstate highways that do not result in disputes among carriers, and that do provide reliable service.

Land carriers claim: Siting: land-based sites are stable; Gulf-based sites follow oil platforms.

Response:

With this statement, the land carriers recognize the “unique plight” of Gulf carriers. *See PetroCom* at 1173.

The Commission mistakenly overlooked this circumstance in its last rulemaking (*see PetroCom* at 1173); it should not repeat that mistake.

See Comments of Michael E. Hofe, attached hereto.

Land carriers claim: Current rules give Gulf carriers incentive to deny land-based carriers' SAB extensions, force pullbacks that reduce service to land areas by land carriers; Gulf carriers can then seek to serve the resulting "unserved" land areas, as evidenced by Bachow/Coastel actions in Mobile MSA.

Response:

The only "incentive" for Gulf carriers to deny land carriers SAB contour extensions into the Gulf is when the land carriers deny reciprocal SAB contour extensions for Gulf carriers.

The only goal of the Gulf carriers is to remove the land carriers' illegal and unauthorized SAB contour extensions from the Gulf carriers' CGSAs, and to stop the land carriers from stealing customers from the Gulf carriers.

Bachow/Coastel did not have a grand scheme to magically "create" unserved land area in the Mobile MSA; the land carrier there decided not to serve that area to buttress its arguments in this rulemaking proceeding.

If Bachow/Coastel had such a scheme, it would have filed a Phase II application for the unserved area the day after the land carrier stopped serving its land area.

Instead, the land carrier surprised Bachow/Coastel when it decided to neglect its customers and not to fulfill its licensee obligations to its customers.

Bachow/Coastel filed its Phase II application for Fort Morgan, AL 22 days after the land carrier's first certification of compliance with the Enforcement Bureau's mandate to remove its illegal SAB contour extensions from Bachow/Coastel's CGSA.

Bachow/Coastel's Phase II application came 10 days after the land carrier's second certification of compliance.

If Bachow/Coastel harbored a long-standing plan to file a Phase II application for the Mobile MSA, it would have filed its Phase II application on March 31, 2000, not April 21, 2000.

Land carriers claim: Equal signal strength at the shoreline does not ensure adequate signal strength for provision of service to land-based subscribers. It also will result in increased “capture” of land-based subscribers by Gulf carriers.

Response:

False and false.

Proper engineering under the current rules effectively reduces incidences of subscriber “capture.”

Also, equal signal strength at the border works in all other cellular markets in the U.S.

Land carriers claim: Microcells are inefficient, requiring numerous installations, and would be ineffective for service purposes without SAB overlap into Gulf.

Response:

This is false.

Engineering allowed under the current rules, such as the use of down-tilt antennae, would provide for land service without SAB contour extensions into the Gulf.

The land carriers’ discussion of “inefficient” is code language for “we don’t want to spend any extra money to serve our customers and all of our service area without extending SAB contours into the Gulf.”

This is especially so because the land carriers have grown accustomed to unbridled theft of Gulf customers via their illegal SAB contour extensions into the Gulf.

Land carriers claim: Interim authority requires Gulf licensees' consent. Past requests for interim authority have been opposed by Gulf carriers. This "option" provides no certainty and does not resolve service reliability problem affecting land areas.

Response:

Interim operating authority ("IOA") does not require Gulf carriers' consent, but is sought at the Commission. *See Alaska RSA No. 1 General Partnership*, Order, 13 FCC Rcd 8043 (WTB, 1997) ("*Alaska*").

Furthermore, Gulf carriers have agreed to requests for SAB contour extensions into the Gulf. *See Contour Extension Agreement, Sabine Pass Cell Site - Sabine Pass, Texas* by and between Bachow/Coastel Operations, Inc. and GTE Mobilnet of South Texas Limited Partnership (September 26, 1996); *see also Intercarrier Roamer Service Agreement* by and between RVC Services, Inc. d/b/a Coastel Communications Company and GTE Mobilnet Service Corp. (August 21, 1990).

IOAs do provide certainty of licensing. *See Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for unserved areas in the Cellular Service and to Modify Other Cellular Rules*, Third Report and Order and Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 7183, ¶ 43 (1992) ("*Part 22*") (IOA authorization not intended to be permanent).

IOAs would solve any service problems along the shoreline of the Gulf because IOA licensees would have the authority to provide service in areas that the Commission's rules would not permit them otherwise to serve.

IOA licensing is perfect for the Gulf because: (1) without IOAs, land carriers' applications are not likely to be granted for extended periods (*see Alaska* at ¶ 4); (2) the Commission can only license IOAs to adjacent licensees, which protects the land carriers to serve Gulf waters from outside competition (*see Part 22* at ¶ 43); (3) the Commission permits an IOA licensee to agree with a permanent adjacent licensee (here, a Gulf carrier) to file applications requesting dual licensing of cell sites.

Land carriers claim: Collocation of Gulf carriers on land sites will unavoidably result in capture of land-based subscribers by Gulf carriers and is unacceptable. There is no basis for forced collocation on land sites. Coastel's assertion that capture can be prevented is technically unsound.

Response:

Collocation does not result in "unacceptable" subscriber capture - collocation is working on the A side in the Gulf.

The basis for forced collocation is to help alleviate the "unique plight" of Gulf carriers' transient operations.

Also, without mandatory collocation, the Commission can never permit Gulf carriers' service areas to be frozen in the Gulf waters - "given the inability of Gulf licensees to place transmitters on land, Gulf service areas should not be frozen at their current dimensions." *PetroCom* at 1173.

Land carriers claim: Commission's proposed rules will not resolve service degradation problems affecting land-based customers in coastal areas; there is no basis for separately licensing Coastal Zone.

Response:

Agreed.

**SECTION 316 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED,
REQUIRES A HEARING TO MODIFY GULF LICENSES AS ALLTEL PROPOSES**

Land carriers claim: ALLTEL's proposed rule changes are generally applicable to class of cellular carriers and not directed at terms of individual carrier licenses.

Response:

False.

ALLTEL's proposal does not propose rules of general applicability, *i.e.*, all cellular licensees, or even all B-side cellular licensees.

The Commission does not base rules of general applicability upon any facts peculiar to a licensee, and are not directed specifically at a licensee. *See U.S. v. Daniels*, 418 F. Supp. 1074 (S.D. 1976).

Rules of general applicability must apply to all carriers. *See Market Entry and Regulation of Foreign-Affiliated Entities*, Notice of Proposed Rulemaking, 1 CR 2025, ¶ 91 (1995).

Land carriers claim: Gulf carriers' current service rules resulted from Court remand; by terms of PetroCom decision, Commission may modify rules.

Response:

The Gulf carriers' current service rules resulted from the Commission's rulemaking proceedings before the Third Report and Order in 1992.

By the terms of the *PetroCom* decision, the Commission may modify its rules only if the Commission develops "a convincing rationale for applying a uniform standard to water-based and land-based licensees." *See PetroCom* at 1173.

The Commission has failed to do so in this rulemaking proceeding, as the Second FNPRM, and all of the land carriers' comments, failed to produce a shred of empirical, real-world data upon which to promulgate such rules.

Land carriers claim: The Commission has full authority to modify licenses of an entire class of carriers, including the definition of licensees' service areas, through rulemaking. Its decision to modify land-based cellular carriers' CGSAs was upheld against such a challenge in Committee for Effective Cellular Rules v. FCC, 53 F.3d 1309, 1316-1321 (D.C. Cir. 1995). The Court there held that the Section 316 procedures for modification of individual licenses do not apply when the Commission modifies the licenses of an entire class of licensees through rulemaking. Here, the Commission may modify the definition of the Gulf licensees' CGSA based on a finding, fully supported by the record, that the public interest will be served thereby.

Response:

First, the Commission may not modify licenses through rulemaking unless it is a rulemaking of general applicability, which means that the rulemaking applies to all carriers. *See Market Entry and Regulation of Foreign-Affiliated Entities*, Notice of Proposed Rulemaking, 1 CR 2025, ¶ 91 (1995).

Isolating two licensees from the entire class of cellular licensees is not general rulemaking.

Second, ALLTEL did not base its proposal upon the public interest.

The ALLTEL proposal simply provides the mechanism for land carriers to usurp the Gulf carriers' license for water areas of the Gulf.

Meanwhile, the current rules have withstood public interest scrutiny during the rulemaking proceedings for those rules.

COMMENTS OF MICHAEL E. HOFÉ
VICE PRESIDENT, DOMESTIC ENGINEERING
o2wireless SOLUTIONS, INC.

The propagation characteristics of the Gulf of Mexico are marked different from those over land, but disparate topography near landlocked market boundaries can create similar problems, as can lakes, bays, rivers at market boundaries. It would seem that the similarities are such that, should Alltel's proposal be incorporated into 47 CFR, one could make an argument that other carriers should be allowed to freely extend and overlap contours 12 (nautical) miles into each other's markets wherever significant differences in propagation conditions exist at a market boundary.

Other issues, such as demographics ("major population centers and substantial traffic at cellular shoreline boundaries") is mentioned in the Alltel presentation and exist in many markets in a way comparable to that in the Gulf. Buffalo, NY has a downtown area separated by less than a mile of water by Canada. Mexicali, Mexico is a major city abutting Calexico, California. These are international boundaries, but cities occur adjacent to domestic US boundaries as well. In these sorts of cases, unintentional "signal leakage" and unintentional roaming by subscribers is a continuing problem, as mentioned in the Alltel presentation materials. The problem is not unique to the Gulf of Mexico. To our knowledge, none of these situations has necessitated a rules change to date. Carriers usually can arrive at equitable agreements. If the commission finds that a change of rules is in the public interest in the Gulf of Mexico, other domestic carriers could logically argue for similar rules-based relief in a similar fashion. The issue of major population centers adjacent to market boundaries is thorny, but not unique to the Gulf.

Siting is also raised as a concern in the presentation materials, - "land based sites are stable; Gulf-based sites follow oil platforms". Unfortunately, it's difficult to site a cell anywhere else in the Gulf. The Gulf carriers have to bow to logistics, and in the process are also following a significant portion of their customer base. Thus, sites do move from time to time. This does make coordination and interference control more difficult, but not impossible for land based neighbors.

Logically, in the event the Commission seeks a technical solution to the situation and wishes, through rulemaking, to produce fair and equitable coverage at market boundaries, it may choose to pursue several preliminary steps towards that goal. First, an evaluation of representative, current base station and subscriber equipment parameters may be carried out by or provided to the Commission. Equipment performance, coupled with appropriate system margins (fade margins, vehicle penetration losses, etc.) would lead to a suitable link budget, and a maximum acceptable path loss for 'quality' service. The Alltel presentation materials provide some data along these lines, but many of the actual numbers asserted were not explicitly supported.

After a maximum path loss for land and water based subscribers is established, the differences in propagation parameters over the Gulf of Mexico and each surrounding land area should be evaluated. Carefully gathered, representative (empirical) propagation data for these cases would provide an engineering basis for proper path loss calculations. This process would lead to an accurate method of contour calculation, based on a soundly engineered link budget.

COMMENTS OF TOM DENNIS, P.E.

Technical Comments on the Alltel Proposal Concerning Gulf Rulemaking

Tom L. Dennis, PE

The following comments specifically address the Technical Report prepared by James E. Calkins dated July 3, 2000. It is believed that the Calkins report addresses the central issues of the Alltel proposal, therefore these comments will specifically address the Calkins report on a paragraph by paragraph basis by utilizing and referencing the same paragraph numbers.

1.0 A Fair Solution?

For many years the Gulf Carriers worked under a great disadvantage because of the disparity of the land coverage formula of FCC 22.911(a)(1) and the water coverage formula of 22.911(a)(2). The requirement of maintaining the SAB (service area boundary) of the Gulf carrier entirely within the Gulf of Mexico caused the "best server line", i.e. an imaginary line of equal signal strengths, to be an average of about 12 miles offshore for much of the Texas/Louisiana/Mississippi/Alabama shoreline. The more recent realization that the boundary should be determined by equal signal strengths, utilizing the same formula for both land and Gulf carriers, is undoubtedly a situation to which the land carriers object in the strongest terms. Nevertheless, the boundary between a Gulf carrier and a land carrier is no different than the line between two land carriers and should be treated in a similar fashion.

There is no question that the land carriers require a significantly stronger signal to serve a hand-held cellular telephone in an automobile than the gulf carrier needs to serve a platform with a gain antenna. What this really proves, however, is that the signal arriving at the shoreline from a Gulf carrier has always been of insufficient strength to serve the land based subscriber equipment.

A Fair solution is greatly to be desired, however the ALLTEL proposal falls short of the goal of being realistically fair to the Gulf carriers.

1.1 Adequate Service and the Existing Rules

Large extensions into the Gulf would undoubtedly exist, as Mr. Calkins points out, if the land carriers continued to attempt to serve the beach resort areas by saturating the area with RF from powerful stations with high antennas. The resort areas are relatively small and well defined, like the beachfront at Galveston, and therefore could be well served by a few microcells with downtilt antennas. The entire shoreline could not, admittedly, be served in this fashion, but the majority of the land carriers revenue along the coast comes from a relatively few, and geographically small, areas.

It would appear that the complaint that the existing rules do not allow adequate service to the land carriers is simply a complaint that they no longer have the ability to run roughshod over the Gulf carriers. The required signal strengths in Mr. Calkins report are probably quite correct; the challenge should be for the land carriers to engineer their system to achieve these signal levels without massive interference to the Gulf carriers.

1.1.1 Propagation Plot of Land Site (Gulf Shores)

The propagation plot shown by Mr. Calkins in Appendix B, plot 1, is unquestionably correct; however it proves my point quite well. To quote: "Although located over 9 km from the shoreline, the sectors pointed towards the coast ...". To serve this beach area the site(s) should be much closer to the shore and should be sectorized parallel to the beachfront, not aimed at the Gulf. If the revenue does not justify this type of design, then the land carrier should not be too worried about an occasional capture by a Gulf carrier!

1.2 A neutral zone will improve service?

It would appear that a neutral zone would benefit only the land carrier. We are again back to a situation whereby the land carriers wish to solve their interface problems at the expense of the Gulf carriers. (Note that the "neutral zone" is all offshore!).

1.2.1 Propagation plot of Typical Land Site under Proposed Rules (Gulf Shores).

This really is scary. ALLTEL's proposed rules would allow the removal of downtilt from the land site and would allow a power increase from one watt to 150 watts. Just the power increase would put a 21 dB stronger signal into the Gulf; removal of the downtilt would wreck further havoc with offshore communications.

1.2.2 Plot of Gulf Site (VK124) under proposed ALLTEL Rules

The proposed rules would, apparently, allow a doubling of power at Coastel's VK124 site. Compare this to the 150 to one increase for GTE in the paragraph above!

2.0 Invalid Solutions?

The Gulf carriers proposed solutions would undoubtedly cause some financial pain for the land carriers. Co-location, microcells, and signal balancing are, however, established engineering tools which can create solutions to even the most difficult problems. The Centennial letter referenced by Mr. Calkins in his paragraph 2.2.3 is a good example of an engineered solution.

2.3 Microcells are a solution

Here we have a difference of opinion. I agree that microcells cannot be deployed along the entire 1,000 mile Gulf coastline. They can, however, be utilized in the resort and high population density areas. Occasional capture of a land based

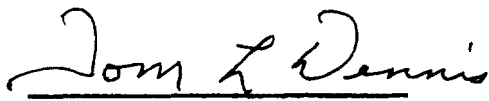
mobile unit should not be considered a major problem. Subscriber identification should be area of further investigation.

3.0 Summary

The various proposals submitted by all parties are a good first step towards resolving the interface and interference problems. The use of a single formula (the land formula) appears to have the support of both parties and should be adapted. Concerning mutual interference problems, it should be remembered that a signal originating in the Gulf would deteriorate rapidly upon impinging on the shoreline; a signal launched from the shore, however, suffers far less attenuation as it traverses a path over water. This is simply another way of stating that the Gulf carriers are at a significant disadvantage.

DECLARATION OF TOM L. DENNIS

1. I am a graduate of the University of Texas (BSEE) and performed additional graduate work at Johns Hopkins University.
2. I was formerly an Engineering Department Head at Collins Radio Company and subsequent to that time I was Vice President of Engineering for Airfone Incorporated.
3. For many years I performed propagation studies in conjunction with system design and implementation of air-to-ground communications at 900 mHz and cellular communications over water.
4. I was the author of a technical exhibit filed in response to a Notice of Proposed Rulemaking , FCC 91-113. The FCC adapted the formula proposed in this exhibit as the over-water propagation formula, FCC 22.911(a)(2).
5. I am a registered professional engineer in the State of Texas.


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